



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

March 25, 1996

The Honorable Michael P. Forbes
U. S. House of Representatives
502 Cannon House Office Building
Washington, D. C. 20515-3201

Dear Congressman Forbes:

Thank you for your letter regarding the Commission's policies for licensing 800 MHz Specialized Mobile Radio (SMR) systems. We apologize for the delay in responding to your letter, but due to the furlough and the blizzard which closed the federal government, we have been unable to respond as promptly as usual. You express concern that the Commission's proposals in the Further Notice of Proposed Rule Making (Further Notice) in PR Docket No. 93-144 will adversely affect operators of smaller SMR systems. In particular, you express concern about the proposed auctioning of already licensed spectrum and the mandatory relocation of existing licensees.

On December 15, 1995, the Commission adopted a First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making (First Report and Order) in PR Docket No. 93-144. The First Report and Order was adopted after consideration of extensive comments from all segments of the SMR industry, including comments from numerous small SMR operators. The Commission's decision also reflects months of work by Commission staff with SMR industry representatives in an effort to achieve consensus on key issues. As a result, the First Report and Order contains numerous provisions and proposals that are responsive to the concerns of existing SMR operators and those operating smaller systems, in particular. These include giving incumbent licensees greater flexibility within their existing service areas, allowing small businesses to pay auction bids in quarterly installments over the license term, and a proposal to designate the "lower 80" and General Category channels as an "entrepreneurs' block" for which only small businesses would be eligible. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions and proposals made.

The Commission's decision to auction 800 MHz SMR spectrum is consistent with Section 309(j) of the Communications Act, which sets forth certain criteria for determining when auctions should be used to award spectrum licenses. Pursuant to these criteria, auctions are to be used to award mutually exclusive initial licenses or construction permits for services likely to involve the licensee receiving compensation from subscribers. The statute also requires that the Commission determine that auctioning the spectrum will further the public interest objectives of Section 309(j)(3) by promoting rapid development of service, fostering competition, recovering a portion of the value of the spectrum for the public, and encouraging efficient spectrum use. The Commission has concluded that auctioning of SMR licenses

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satisfies these criteria. In particular, we believe that auctions will minimize administrative or judicial delays in licensing, particularly in comparison to other licensing methods such as comparative hearings, lotteries (which are specifically prohibited by the statute if the service is auctionable), or "first-come, first-served" procedures. We note that the statute does not distinguish between new services (such as Personal Communications Services) and existing services in terms of whether initial licenses in a given service are auctionable.

Significantly, however, the Commission's decision to use auctions applies only to issuance of initial licenses in the service, and is not intended to affect rights afforded to licensees under existing authorizations. While we recognize that the high level of existing licensing in the SMR service raises additional concerns, we believe auctions are an appropriate licensing mechanism in such an environment. First, auctions will only be used in the event that there are competing applications for the same license. Second, where auctions do occur, we have adopted special provisions, including installment payments, designed to ensure that small businesses are able to compete in the auction and in the provision of SMR service.

With respect to your concerns regarding relocation of incumbent licensees, the First Report and Order contains important safeguards to ensure that the rights of incumbents are protected. First, no incumbent may be relocated unless comparable spectrum is in fact available. Second, the incumbent must be provided with comparable facilities with the full cost borne by the wide-area licensee. Finally, the Commission is seeking additional public comment on what factors should be considered to ensure that alternative facilities are indeed comparable and relocated incumbents are made whole.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Hundt', with a long horizontal flourish extending to the right.

Reed E. Hundt
Chairman

Enclosure

MICHAEL P. FORBES

1ST DISTRICT, NEW YORK

COMMITTEE:

APPROPRIATIONS

SUBCOMMITTEES:

COMMERCE, JUSTICE, STATE, AND JUDICIARY
FOREIGN OPERATIONS, EXPORT FINANCING,
AND RELATED PROGRAMS

TREASURY, POSTAL SERVICE, AND GENERAL
GOVERNMENT

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<http://www.house.gov/forbes/welcome.html>

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Washington, DC 20515-3201

December 27, 1995

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The Honorable Reed E. Hundt
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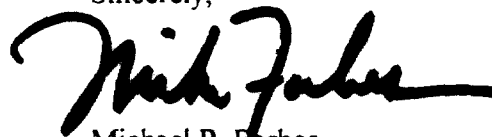
Dear Chairman Hundt:

I am writing to express my strong concern over the Commission's proposals to auction frequencies that are already licensed in the Specialized Mobile Radio (SMR) bands (861-866 MZH). Any implementation of these proposals will be very deleterious to many small businesses in rural areas on Long Island, especially in the West Hampton area.

Congress has mandated auctions for unlicensed spectrum. Congress did not, however, authorize the Commission to auction a spectrum that has already been licensed. The 861-866 MZH spectrum is used by thousands of small family owned businesses that provide specialized mobile radio (SMR) services to public safety agencies, as well as to commercial businesses that use mobile radio equipment and frequencies to dispatch trucks, taxis, etc. as part of their business. This misguided policy now under consideration by the Commission poses an immediate threat to the livelihoods of all these small businesses.

The policy of "clearing" this portion of the spectrum is being offered under the guidelines of creating a higher priced, unproven, "enhanced" technology that many public safety agencies, commercial business interests, and the public neither want nor need. I have great concerns that any effort on the part of the FCC to "clear" this portion of the spectrum (for the special benefit of those who would offer services in competition with small business) is doomed to failure. There is no "spectrum reservation" to which the Commission can relocate these small businesses which will permit them to prosper and grow. "Clearing" 200 continuous channels for use the competitors of these small businesses will permit their competitor to take advantage of future technological developments, and will effectively foreclosure them from expansion, dooming them to ultimate failure.

Sincerely,



Michael P. Forbes
Member of Congress

Congressional

Due ABC 2-8

CONGRESSIONAL CORRESPONDENCE TRACKING SYSTEM
01/19/96

LETTER REPORT

CONTROL NO.	DATE RECEIVED	DATE OF CORRESP	DATE DUE	DATE DUE OLA(857)
9600217	01/19/96	12/27/95	02/15/96	02/13/96

TITLE	MEMBERS NAME	REPLY FOR SIG OF
Congressman	Michael Forbes	REH

CONSTITUENT'S NAME	SUBJECT
personal view	inquiry re: auction proposal

REF TO	REF TO	REF TO	REF TO
PRB	<i>CW</i>	<i>Woolford</i>	

DATE	DATE	DATE	DATE
01/19/96	<i>1/23/96</i>	<i>1/30</i>	

REMARKS: